

**ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

|   |   |                               |  |
|---|---|-------------------------------|--|
|   | ) |                               |  |
| <b>In Re:</b>                                     | ) |                               |  |
|   | ) |                               |  |
| <b>Four Corners Power Plant</b>                   | ) | <b>NPDES Appeal No. 19-06</b> |  |
| <b>NPDES Renewal Permit: NN0000019</b>            | ) |                               |  |
| <b>Arizona Public Service Company (Permittee)</b> | ) |                               |  |
|   | ) |                               |  |
|   | ) |                               |  |

**ARIZONA PUBLIC SERVICE COMPANY'S RESPONSE TO  
PETITION FOR REVIEW**

**ATTACHMENT 21**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

OFFICE OF THE  
REGIONAL ADMINISTRATOR

SEP 30 2019

Mr. Neal Brown  
Department Manager  
Environmental Operations  
Arizona Public Service Company  
400 North 5<sup>th</sup> Street, M.S. 9303  
Phoenix, AZ 85004-3902

RE: Section 401 of the Clean Water Act Water Quality Certification Waiver for the Four Corners Power Plant

Dear Mr. Brown:

Section 401 of the Clean Water Act requires that any person applying for a federal permit or license which may result in a discharge of pollutants into waters of the United States must obtain a state or tribal water quality certification that the activity complies with all applicable water quality standards, limitations, and restrictions. In the case of the Four Corners Power Plant (FCPP), which is located on the Navajo Nation, EPA is the Section 401 certifying entity.<sup>1</sup> By its letter to EPA dated March 27, 2019, Arizona Public Service (APS), the FCPP operator, requested that EPA certify or waive certification as to the National Pollutant Discharge Emission System (NPDES) permit being issued by EPA for the FCPP.

When EPA released the draft Revised NPDES permit for the FCPP on April 30, 2019, EPA explicitly requested public comment on its proposal to waive the 401 certification requirement, as permitted by the statute and by 40 CFR 124.53(a). EPA received two comments regarding 401 certification, and those comments are addressed in the Response to Comments document accompanying the final permit.

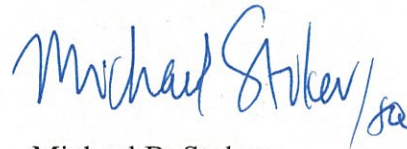
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<sup>1</sup> The Navajo Nation, in its letter to Wayne Nastri, EPA Regional Administrator, dated October 31, 2005, clarified that the Navajo Nation was explicitly not requesting Treatment as a State recognition as to Morgan Lake (and the associated No Name Wash, the outlet of Morgan Lake). EPA therefore excluded Morgan Lake from the list of Navajo Nation waterbodies for which EPA was recognizing the Navajo Nation's jurisdiction for purposes of CWA Section 303(c) and 401. See Decision Document: Approval of the Navajo Nation Application for Treatment in the Same Manner as a State for Sections 303(c) and 401 of the Clean Water Act, January 20, 2006, at page 2. For that reason, EPA continues to be the regulatory authority for purposes of CWA Section 401 for Morgan Lake and the upper segment of No Name Wash.

Where EPA is both the certifying authority under Section 401 and the NPDES permitting authority under Section 402, and where the purpose of both the certification and the permit is to protect water quality, EPA believes it is appropriate to meet its obligations under Section 401 by waiving the certification requirement. Accordingly, EPA waives water quality certification pursuant to Section 401 of the Clean Water Act for the reissued FCPP NPDES permit. The waiver is contingent upon the applicant's execution of the work as described in the permit application and according to the terms and conditions of the NPDES 404 permit.

Should you have any questions, please contact Gary Sheth, NPDES Permits Section, at (415) 972-3516.

Sincerely yours,

A handwritten signature in blue ink that reads "Michael B. Stoker" followed by a stylized initial "MS".

Michael B. Stoker